

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**Southern California Edison Company**

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**Docket No. ER18-156-000**

**MOTION TO INTERVENE AND ANSWER OF  
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

The California Independent System Operator Corporation (“CAISO”)<sup>1</sup> respectfully submits this motion to intervene and answer to the protest filed by EDF Renewable Energy Inc. (“EDF”) (“EDF Protest”).<sup>2</sup> EDF’s Protest argues that the amendment to the generator interconnection agreement (“GIA”) that Southern California Edison Company (“SCE”) filed in this proceeding is unjust and unreasonable because it allows the AltaGas Sonoran Energy project (“Project Q17”) to retain its Full Capacity Deliverability Status, which EDF alleges is a violation of the CAISO tariff’s commercial viability criteria.<sup>3</sup> EDF offers no evidentiary support for this allegation, and misinterprets the CAISO tariff. The CAISO has enforced and continues to enforce the commercial viability criteria consistently, including for Project Q17. The CAISO respectfully requests that the Commission disregard EDF’s Protest and accept the GIA amendment as proposed.

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<sup>1</sup> Capitalized terms not otherwise defined herein have the meanings set forth in the Master Definitions Supplement, Appendix A to the CAISO tariff.

<sup>2</sup> The CAISO submits this answer pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213 (2017). The CAISO respectfully requests waiver of Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), to permit it to make an answer to EDF’s Protest. Good cause for this waiver exists here because the answer will aid the Commission in understanding the issues in the proceeding, provide additional information to assist the Commission in the decision-making process, and help to ensure a complete and accurate record in the case. *See, e.g., Equitrans, L.P.*, 134 FERC ¶ 61,250, at P 6 (2011); *California Independent System Operator Corp.*, 132 FERC ¶ 61,023, at P 16 (2010); *Xcel Energy Services, Inc.*, 124 FERC ¶ 61,011, at P 20 (2008).

<sup>3</sup> *Inter alia*, Section 4.4.7 of Appendix U.

## I. BACKGROUND

Project Q17 entered the CAISO's generator interconnection queue in 2003.<sup>4</sup> It is subject to the generator interconnection procedures under Appendix U to the CAISO tariff, which, pursuant to Order No. 2003, anticipates construction within 10 years unless the CAISO and the transmission owner agree that engineering, permitting, and construction of the project will take longer (such agreement not to be unreasonably withheld).<sup>5</sup> At the time, Project Q17 was planned to be a 520 MW combined cycle natural gas facility. All interconnection projects that pre-dated the CAISO's current cluster study and deliverability allocation procedures were deemed to have "Full Capacity Deliverability Status," a status that allows the resource to be eligible to provide Resource Adequacy capacity through a power purchase agreement with a load serving entity. Full Capacity Deliverability Status represents that the CAISO has planned for the generator to be able to deliver its output during peak conditions.<sup>6</sup> Generators that are ineligible or elect not to have Full Capacity Deliverability Status are designated "Energy Only," and are ineligible to provide Resource Adequacy.<sup>7</sup>

Because of Project Q17's significant capacity and associated network upgrades, the parties agreed to negotiate a GIA only after the Commission had approved SCE's request for incentive rate treatment and abandoned plant recovery.<sup>8</sup> The parties

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<sup>4</sup> See Attachment 1, Declaration of Ms. Deborah Le Vine ("Le Vine Declaration"), p. 2; see also CAISO public generator interconnection queue, available at <https://rimspub.caiso.com/rim5/logon.do>.

<sup>5</sup> Section 3.5.1 of Appendix U.

<sup>6</sup> Full Capacity Deliverability Status should not be confused with firm transmission service. The CAISO can dispatch/curtail any generating unit according to its security-constrained economic dispatch and contingency conditions.

<sup>7</sup> See Appendix A.

<sup>8</sup> Le Vine Declaration at P 7; *Southern California Edison Co.*, 134 FERC ¶ 61,181 (2011).

therefore executed the original LGIA on November 10, 2014, which required the generator to reach commercial operation in 2018.<sup>9</sup>

In March 2016, the Commission approved several enhancements to the CAISO's generator interconnection procedures, including "commercial viability criteria" that interconnection customers must satisfy to retain their Full Capacity Deliverability Status when requesting to extend their commercial operation dates beyond the development periods anticipated by the CAISO tariff.<sup>10</sup> Specifically, the CAISO tariff now states:

Interconnection Customers will be converted to Energy-Only Deliverability Status if they exceed ten (10) years from the date the Interconnection Request is received by the CAISO, unless the Interconnection Customer demonstrates that it is commercially viable. The CAISO's agreement to an extension of the proposed In-Service Date with retention of Deliverability will be predicated upon the Interconnection Customer's ability to meet and maintain the following commercial viability criteria:

- a) Providing proof of having, at a minimum, applied for the necessary governmental permits or authorizations, and that the permitting authority has deemed such documentation as data adequate for the authority to initiate its review process;
- b) Providing proof of having an executed and regulator-approved power purchase agreement, attesting that the Generating Facilities will be balance-sheet financed, or otherwise receiving a binding commitment of project financing;

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<sup>9</sup> See *Southern California Edison Co.*, Docket No. ER15-441-000. Appendix A to the CAISO tariff defines Commercial Operation Date as "The date on which a Generating Unit or project phase at a Generating Facility commences Commercial Operation. . ." and In-Service Date as "The date upon which the Interconnection Customer reasonably expects it will be ready to begin use of the Participating TO Interconnection Facilities to obtain back feed power," which generally occurs shortly before the Commercial Operation Date. While they have unique definitions, they are often used interchangeably because both terms require the actual construction of the generator. Older CAISO generator interconnection procedures (e.g., Appendix U) generally refer to In-Service Date, and more recent generator interconnection procedures (i.e., Appendix DD) generally refer to the Commercial Operation Date.

<sup>10</sup> Older generator interconnection procedures anticipated ten years. More recent procedures anticipate seven years. Compare Section 3.5.1 of Appendix U with Section 3.5.1.4 of Appendix DD.

c) Demonstrating Site Exclusivity for 100% of the property necessary to construct the facility through the Commercial Operation Date requested in the modification request. A Site Exclusivity Deposit does not satisfy this criterion;

d) Having an executed Generator Interconnection Agreement (“GIA”); and

e) Being in good standing with the GIA such that neither the Participating TO nor the CAISO has provided a Notice of Breach that has not been cured and the Interconnection Customer has not commenced sufficient curative actions.

If the Interconnection Customer fails to meet all of the commercial viability criteria but informs the CAISO that it intends to proceed with the modified Commercial Operation Date, the Generating Facility’s Deliverability Status will become Energy-Only Deliverability Status.<sup>11</sup>

Additionally, if an interconnection customer can satisfy all of the criteria except criterion (b), it may postpone its conversion to Energy Only for one year while it seeks financing to meet that criterion.<sup>12</sup>

To ensure that interconnection customers continue to meet the commercial viability criteria once they are subject to them, the CAISO included an annual review process:

For Interconnection Customers extending their Commercial Operation Date beyond the seven-year threshold and retaining Deliverability pursuant to Section 4.4.7, the CAISO will perform an annual review of commercial viability. If any Interconnection Customer fails to maintain its level of commercial viability, the Deliverability Status of the Generating Facility corresponding to the Interconnection Request will convert to Energy-Only Deliverability Status.<sup>13</sup>

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<sup>11</sup> Section 4.4.7 of Appendix U.

<sup>12</sup> *Id.*

<sup>13</sup> Section 4.4.7.1 of Appendix U.

The CAISO performs this annual review for all interconnection customers subject to the commercial viability criteria.

In 2016, Project Q17 requested that the CAISO and SCE determine whether extending its commercial operation date to 2021 would have a material impact on other interconnection customers, namely, whether the request would negatively affect the cost or timing of other interconnection customers' projects. Because they concluded that there was no material impact, the CAISO and SCE agreed to the modification. However, under the commercial viability criteria, the CAISO informed Project Q17 that retaining its deliverability capacity allocation would be predicated on its ability to meet the commercial viability criteria (alternatively, Project Q17 could have elected to forego the commercial operation date extension). Project Q17 agreed, and demonstrated that it was commercially viable. The parties thus amended the GIA to adopt the new commercial operation date. No party protested, and the Commission approved the amendment on February 27, 2017.<sup>14</sup>

While the GIA amendment was pending, on February 16, 2017, Project Q17 submitted a request for the CAISO and SCE to evaluate whether modifying the generator from a combined cycle natural gas plant to a photovoltaic solar facility would have a material impact on the cost or timeline of any other project. Because it would not (and in fact, did not require a restudy), the CAISO and SCE agreed that to the change in technology, which resulted in this proceeding to amend Project Q17's GIA.

EDF protested the amendment, arguing that Project Q17 should be converted to Energy Only under the commercial viability criteria. EDF argues that this issue has a

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<sup>14</sup> *Southern California Edison Co.*, Docket No. ER17-785-000.

material impact on other projects, specifically, that EDF's own later-queued projects could financially benefit if Project Q17 loses its deliverability capacity allocation or is withdrawn from the queue.<sup>15</sup>

## **I. ANSWER TO PROTESTS**

### **A. EDF's Protest has no evidentiary support.**

EDF's Protest is premised on the allegation that Project Q17 did not or cannot comply with the CAISO's commercial viability criteria. As described in Section C, below, this premise is false. But perhaps more critically, EDF has failed to provide any evidentiary support for this premise. EDF specifically alleges that Project Q17 lacked or lacks site exclusivity, permitting, or financing as a solar project; but EDF fails to provide any evidence for these allegations. Commission precedent is clear that parties must provide "adequate support for their positions" in the form of "cogent evidence."<sup>16</sup> Put another way, the Commission has stated that "speculative allegations" alone are insufficient.<sup>17</sup> But speculative allegations are all that EDF's Protest provides. At no point in its protest does EDF offer evidentiary support for its allegation. EDF fails to attach exhibits, declarations, or even reference public documents. Instead EDF makes hazy claims such as:

- "So far as EDF RE is aware . . ." (which appears twice);<sup>18</sup>

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<sup>15</sup> EDF Protest at pp. 20-21.

<sup>16</sup> See *Cities of Anaheim, et al. v. California Independent System Operator Corp.*, 95 FERC ¶ 61,197 (2001).

<sup>17</sup> *Eric S. Morris v. Southwest Power Pool Inc.*, 149 FERC ¶ 61,207 (2014).

<sup>18</sup> EDF Protest at pp. 6, 21.

- “It is our understanding;”<sup>19</sup> and
- “Apparently”<sup>20</sup> (which appears 14 times in EDF’s Protest).

Such vague claims and speculation cannot constitute evidentiary support under Commission rules. The Commission should therefore ignore EDF’s Protest in its entirety. The CAISO, SCE, and Project Q17 cannot be imposed with the burden of proof where EDF has not met any burden under Commission precedent.

**B. EDF misunderstands the Material Modification Analysis.**

EDF is not a party to the LGIA at issue in this proceeding. EDF admits its interest in this proceeding is to try to benefit two of its projects in the CAISO queue, both of which are proposed to be located near Project Q17, but which entered the CAISO queue in 2008 and 2010.<sup>21</sup> Under the CAISO tariff, if an interconnection customer that has signed a GIA withdraws or is converted to Energy Only, the participating transmission owner – not later queued projects (like in other ISO/RTOs) – assumes the financing responsibility for any network upgrades still required for later-queued projects.<sup>22</sup> As such, later-queued projects can benefit from where the withdrawal or conversion to Energy Only of earlier-queued projects frees up capacity and/or makes later-queued projects’ assigned network upgrades (which were premised on the construction of upgrades associated with earlier-queued projects before them) unnecessary.

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<sup>19</sup> *Id.* at p. 6.

<sup>20</sup> *Id.* at pp. 4, 5, 6 (twice), 7 (four times), 8 (twice), 12, 13, 15, and 17.

<sup>21</sup> EDF Protest at pp. 20-21.

<sup>22</sup> See Section 14.2.2 of Appendix DD to the CAISO tariff.

This is not to say that EDF is correct in arguing that Project Q17's retaining deliverability capacity harms EDF or later-queued customers. First, when the CAISO considers material impact, it evaluates whether the proposed modification *increases* the costs or would *delay* development of later-queued projects. The CAISO does not evaluate whether the project's withdrawal or conversion to Energy Only would *decrease* other projects' costs or accelerate their timelines, as EDF argues. Under EDF's logic, *all* earlier-queued projects harm *all* later-queued projects because the later-queued projects may benefit if the earlier-queued projects withdraw. This logic fails. Like all ISO/RTOs, the CAISO administers its interconnection queue on a first-come, first-served basis.<sup>23</sup> The timing and costs of EDF's projects (and all later-queued projects) never have *increased* because of any Project Q17 modification, and as such, Project Q17 does not harm or negatively impact EDF, other interconnection customers, or ratepayers. Second, EDF's engineering assumptions on the impact to its own projects have critical errors, which the CAISO communicated to EDF before it filed its Protest.<sup>24</sup>

### **C. Project Q17 is in compliance.**

EDF's allegation that Project Q17 has not complied with CAISO tariff requirements is false. The CAISO has carefully enforced its tariff with Project Q17 (as the CAISO does for all projects), and Project Q17 has complied.<sup>25</sup> As EDF correctly notes in its Protest, Project Q17 is the oldest active project in the CAISO

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<sup>23</sup> Like ISO/RTOs, the CAISO studies interconnection requests and assigns precedence by cluster rather than individually.

<sup>24</sup> Le Vine Declaration at P 6.

<sup>25</sup> Le Vine Declaration at PP 2-10.



interconnection queue.<sup>26</sup> The CAISO explained when it implemented the commercial viability criteria that the criteria were designed to deter interconnection customers from lingering in queue, as doing so can undermine study processes and impact other customers.<sup>27</sup> The CAISO obviously has been motivated to enforce the very provisions it created to apply to interconnection customers like Project Q17.

EDF raised the issues in its Protest with the CAISO well in advance of filing.<sup>28</sup> EDF directly asked CAISO staff whether Project Q17 had demonstrated its compliance with the commercial viability criteria as both a combined cycle project and as a solar project and when it had done so, including regarding site exclusivity and permitting details. CAISO staff refused to answer EDF's questions about Project Q17 because the CAISO tariff strictly forbids the CAISO from discussing confidential customer information with a third party (perhaps especially a direct competitor).<sup>29</sup> Nevertheless, CAISO staff told EDF that the CAISO's public queue report showed that Project Q17 still had Full Capacity Deliverability Status, which it would not if it had failed the commercial viability criteria.

The CAISO is now authorized by Project Q17 to state that at the time it converted to a solar project, Project Q17 met the commercial viability criteria as either a combined cycle project or a solar project.<sup>30</sup> Shortly after this Answer is filed, Project Q17 will

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<sup>26</sup> EDF Protest at p. 10. The CAISO's interconnection queue is publicly available at <https://rimspub.caiso.com/rims5/logon.do>.

<sup>27</sup> *California Independent System Operator Corp.*, Tariff Amendment, Docket No. ER16-693-000 (Jan. 7, 2016) at p. 25. Note that EDF's Protest cites to this filing on pg. 9 but erroneously cites to Docket No. ER16-673-000.

<sup>28</sup> See Le Vine Declaration at P 11.

<sup>29</sup> See, e.g., Section 13 of Appendix U.

<sup>30</sup> Le Vine Declaration at PP 8-10.

affirm that it continues to meet the commercial viability criteria as a solar project as part of the annual review process. For the reasons explained in Section (D), below, the CAISO does not believe it was necessary for Project Q17 to meet the commercial viability criteria as a solar project until after its technology change request had been approved. Nevertheless, Project Q17 did, in fact already have the necessary permitting, land, and financing for a solar project, and demonstrated as much to the CAISO.<sup>31</sup>

**D. The CAISO has applied its tariff correctly.**

The CAISO has applied the commercial viability criteria consistently according to its tariff. Since the commercial viability criteria became effective in March 2016, the CAISO has applied the commercial viability criteria to all 21 requests to extend commercial operation dates beyond their anticipated seven or ten years in queue.<sup>32</sup> Like Project Q17, the majority have been able to meet the commercial viability criteria and retain their deliverability capacity while they finalize permitting and construction. Several projects, however, have not been able to meet the commercial viability criteria and either have been converted to Energy Only or are using their one-year safe harbor to seek financing.<sup>33</sup> The CAISO currently is in the process of collecting and processing affidavits under the annual review process, including for Project Q17.

EDF repeatedly alleges that the CAISO tariff required the CAISO to “re-verify” that Project Q17 met the commercial viability criteria when it converted from natural gas to solar, and that the CAISO failed to do so. EDF has not provided any evidentiary

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<sup>31</sup> *Id.*

<sup>32</sup> Le Vine Declaration at P 3.

<sup>33</sup> *Id.*

support for this allegation, and in any case, EDF's allegation is not based on actual tariff language EDF's imposed requirement of immediate "re-verification" is neither effective nor reasonable.

EDF both misinterprets and overemphasizes the phrase, "Interconnection Customers will be converted to Energy-Only Deliverability Status if they exceed ten (10) years from the date the Interconnection Request is received by the CAISO, unless the Interconnection Customer demonstrates that it is commercially viable."<sup>34</sup> This provision must be put into its full context because the CAISO's currently effective tariff language makes it clear that the CAISO never intended for that sentence to apply as broadly as suits EDF's purposes.

The CAISO tariff provides two circumstances that trigger evaluation of an interconnection customer's compliance with the commercial viability criteria: (1) requests to extend an in-service date and (2) the CAISO's annual verification for interconnection customers that are subject to the commercial viability criteria. These triggers are based on the currently effective tariff language: "The CAISO's agreement to an extension of the proposed In-Service Date with retention of Deliverability will be predicated upon the Interconnection Customer's ability to meet and maintain the following commercial viability criteria,"<sup>35</sup> and "For Interconnection Customers extending their Commercial Operation Date beyond the seven-year threshold and retaining Deliverability pursuant to Section 4.4.7, the CAISO will perform an annual review of commercial viability."<sup>36</sup> Both provisions, but the latter provision especially, demonstrate

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<sup>34</sup> EDF Protest at pp. 3, 16 (quoting Section 4.4.7 of Appendix U).

<sup>35</sup> Section 4.4.7 of Appendix U to the CAISO tariff.

<sup>36</sup> Section 4.4.7.1 of Appendix U to the CAISO tariff.

that the CAISO never intended to re-evaluate commercial viability criteria for any and every modification an interconnection customer may make while in queue, as EDF seeks. Moreover, the CAISO never intended to apply the commercial viability criteria to every interconnection customer already beyond their seven or ten years in queue for engineering, permitting, or construction delays. The CAISO and the relevant participating transmission owner already had consented to extensions for these customers beyond the seven or ten years before the commercial viability criteria existed. Applying the commercial viability criteria on them retroactively would be punitive and unreasonable. As such, the CAISO only evaluates compliance with the commercial viability criteria when projects request to extend their in-service date and annually thereafter until they reach commercial operation.

Project Q17 was subject to the commercial viability criteria because it did extend its In-Service Date after the commercial viability criteria provisions were effective. Along with all of the other interconnection customers subject to the commercial viability criteria, Project Q17 will re-demonstrate its continued compliance – *as a solar project* – by December 1, 2017.

EDF's Protest argues that the CAISO tariff provisions required the CAISO to evaluate whether Project Q17 was commercial viability as a solar project when Project Q17 requested to change its fuel source from natural gas to photovoltaic solar. As described above, the CAISO's tariff does not require such an immediate evaluation. The CAISO never intended to evaluate commercial viability for modifications that do not impact an in-service date, and the reasons for this intent are manifold. First, it is unreasonable and imprudent to require an interconnection customer to apply for all

necessary government permits and secure financing and land before the CAISO has even approved the change in technology. Such a requirement would be extremely burdensome to generation developers who would be forced to spend exorbitant sums merely on the hope that their requested modification passes the CAISO's material modification analysis. Moreover, there is no risk that a project will neglect its need to comply with the commercial viability criteria after its technology change has been approved because of the annual review process.

Second, many or most modifications may have little impact on a project's viability or its in-service date. Interconnection customers have to submit modification requests for changes in technology, changes to the type or number of inverters they will use, adding energy storage capacity, etc. The CAISO never intended these types of changes to trigger the commercial viability criteria. If the CAISO had intended for such modifications to trigger a commercial viability test, it would have been very simple for the CAISO to draft such tariff language. But the CAISO did not intend for technological and other modifications to trigger a commercial viability test; only extensions to the interconnection customer's in-service date. This was a purposeful choice. The CAISO generally receives more modification requests than interconnection requests on an annual basis,<sup>37</sup> so applying the commercial viability criteria to all modification requests for customers beyond the anticipated seven or ten years would be burdensome to both the CAISO and interconnection customers.

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<sup>37</sup> See *American Wind Energy Association*, Joint Comments of CAISO, MISO, NYISM, and PJM, Docket No. RM15-21-000 at p. 3 (Sep. 8, 2015) (citing <https://www.aiso.com/Documents/2014ModificationAssessmentAccountingReport.pdf>).

Third, the annual review process already provides the verification EDF so desperately seeks. EDF's Protest posits that the CAISO cannot rely on the annual review process because it only reviews "the information that was initially provided."<sup>38</sup> But again EDF cites nothing to support this argument, which contradicts the actual tariff language: "the CAISO will perform an annual review of commercial viability."<sup>39</sup> If the CAISO had intended to only review the information that was initially provided, it would have revised its tariff accordingly. It did not because this makes little practical sense. Generation projects, permitting, and financing frequently evolve in the development process, and the CAISO had no intention of impeding an interconnection customer's ability to enhance its project while in queue. EDF states that allowing the CAISO to use the annual review to assess a project as then constituted would "allow a huge loophole," in that "a developer could simply submit information, obtain CAISO buy-off, and then change course without consequence."<sup>40</sup> But the opposite is true: It is the annual review process itself that prevents interconnection customers submitting information and then changing course without consequence. Project Q17 is a perfect example: Even if it had

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<sup>38</sup> EDF Protest at p. 15 (emphasis removed).

<sup>39</sup> Section 4.4.7.1 of Appendix U. EDF's language is equally absent from Section 6.5.2.1.2 of the CAISO's Business Practice Manual for Generator Management: "In order to ensure that Generating Facilities maintain the level of commercial viability upon which the COD extension approval was conditioned, the CAISO will perform an annual review of the Generating Facility's commercial viability during the TP Deliverability allocation process. Interconnection Customers are required to submit a notarized affidavit confirming that they continue to meet the commercial viability criteria. A separate commercial viability affidavit is not required, the CAISO will review information provided in the TPD affidavits to confirm commercial viability levels are maintained. If any Interconnection Customer fails to meet the commercial viability criteria, the Deliverability Status of the Generating Facility corresponding to the Interconnection Request will convert to Energy Only Deliverability Status. The due date for such affidavits is announced via CAISO market notice. The CAISO will provide a template for the affidavit on its website. Failure to submit an affidavit will result in the Deliverability Status of the Generating Facility (or relevant portion corresponding to the COD extension request) converting to Energy Only Deliverability Status."

<sup>40</sup> EDF Protest at p. 16.

not already done so, the annual review process will require Project Q17 to demonstrate that it meets the commercial viability project as a solar project. In other words, the annual review process will work exactly as designed and prevent any abuse of the modification process.

EDF further argues that “the LGIA in this docket is unjust and unreasonable because it is inconsistent with the all the policy reasons why CAISO sought to adopt, and the Commission accepted, the [commercial viability criteria] in CAISO’s tariff.”<sup>41</sup> The CAISO disagrees because the LGIA complies with both the CAISO’s currently effective tariff language and the policy behind it. Moreover, EDF’s reliance on the background section in the CAISO’s transmittal letter is ill-founded. Even assuming *arguendo* that EDF has accurately summarized the CAISO’s intent from its transmittal letter – and EDF has not – that intent does not trump the plain language of the actual tariff provisions. Moreover, the D.C. Circuit has explained that the value of transmittal letters is nebulous under the filed rate doctrine.<sup>42</sup>

## **II. MOTION TO INTERVENE OUT OF TIME**

The CAISO respectfully requests leave to intervene out of time in this proceeding.<sup>43</sup> The CAISO had not intervened before EDF’s Protest because GIA amendments generally are perfunctory. The CAISO is a party to the amended GIA. EDF’s Protest alleges that the CAISO has not enforced its tariff and that its tariff and this amended GIA is unjust and unreasonable. As such, the CAISO has a significant

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<sup>41</sup> EDF Protest at pp. 13-14.

<sup>42</sup> See *West Deptford Energy LLC v. FERC*, 766 F.3d 10, 18-19 (2014).

<sup>43</sup> 18 C.F.R. § 385.214(d).

interest in this proceeding that no other party can represent. No existing party will be prejudiced by the CAISO's intervention out of time.

### III. CONCLUSION

For the reasons discussed above, the Commission should disregard EDF's Protest and approve the amended LGIA as filed.

**/s/ William H. Weaver**

Roger E. Collanton  
General Counsel  
Sidney Mannheim  
Assistant General Counsel  
William H. Weaver  
Senior Counsel  
California Independent System  
Operator Corporation  
250 Outcropping Way  
Folsom, CA 95630  
(916) 608-1225  
[bweaver@caiso.com](mailto:bweaver@caiso.com)

*Attorneys for the California  
Independent System  
Operator Corporation*

Dated: November 30, 2017



# **Attachment 1**

**Declaration of Ms. Deborah Le Vine**

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**Southern California Edison Company**            )  
  )  
  )      **Docket No. ER18-156-000**

**DECLARATION OF DEBORAH A. LE VINE ON BEHALF OF  
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

I, Deborah A. Le Vine, state as follows:

1. I am the Director of Infrastructure Contracts and Management for the California Independent System Operator Corporation (“CAISO”). My business address is 250 Outcropping Way, Folsom, CA 95630. As Director of Infrastructure Contracts and Management, I manage the CAISO’s Regulatory Contracts group, which negotiates, records, and preserves all regulatory contracts, such as generator interconnection agreements (“GIAs”). I also manage the CAISO’s Queue Management group, which administers the CAISO’s generator interconnection queue and interconnection customer requests after the interconnection customer has completed its initial studies and executed a GIA. The Queue Management group also administers all modification requests by interconnection customers.

2. Since the Commission approved the CAISO’s commercial viability criteria tariff provisions in March 2016, the CAISO has enforced those tariff provisions consistently and without exception to all interconnection customers that request to modify their In-Service Dates such that those In-Service Dates will be beyond the ten years or seven years anticipated for construction (depending on when the interconnection request was submitted). The CAISO also has performed the

commercial viability annual review process concurrent with the CAISO's annual Transmission Plan Deliverability allocation process – which also requires an affidavit from interconnection customers regarding their project status – each winter since Commission approval.

3. To date, 21 interconnection customers have been subject to the commercial viability criteria as a result of requesting to extend their In-Service or Commercial Operation Dates beyond the timelines anticipated by the CAISO tariff's generator interconnection procedures. Of these 21, the majority have been able to satisfy the criteria and retain Full Capacity Deliverability Status. Several, however, have not, and have either been converted to Energy Only Deliverability Status or are using the one year safe harbor provided by the tariff for those projects that only lack financing.

4. The AltaGas Sonoran project submitted its interconnection request in on March 17, 2003. Like all valid interconnection requests, it received a unique queue number: Q17 ("Project Q17"). Project Q17 is subject to the CAISO's generator interconnection procedures under Appendix U to the CAISO tariff.

5. EDF Renewable Energy Inc. ("EDF") has submitted (or acquired) a number of interconnection requests, including two that are relevant to the instant proceeding: the Almasol Project, Project Q365, which submitted its interconnection request in 2008; and the Deseret Harvest Project, Project 643AE, which submitted its interconnection request in 2010. Because both EDF projects came years after Project Q17, their interconnection studies assume the construction of network upgrades and other facilities necessary to interconnect higher-queued interconnection requests, including Project Q17.

6. EDF's projects plan to interconnect to different substations than Project Q17. Specifically, Project Q17 is interconnecting to the Colorado River substation 500 kV bus, which does not depend on or impact the new transformer assigned to EDF's Desert Harvest project, which plans to interconnect to the Red Bluff substation. The CAISO communicated these facts to EDF before EDF filed its Protest in the instant proceeding.

7. Project Q17 originally had planned to be a natural-gas-fired combined cycle generator over 500 MW in generating capacity. Because of its significant capacity and associated network upgrades, the parties agreed to negotiate a GIA only after the Commission had approved Southern California Edison Company's ("SCE") request for incentive rate treatment and abandoned plant recovery. The parties therefore executed Project Q17's original GIA on November 10, 2014, which required the generator to reach commercial operation on January 2, 2018.

8. In May 2016, Project Q17 submitted a request for a material modification analysis to determine whether it could extend its In-Service Date to 2021. When extending an In-Service Date beyond (or further beyond) the tariff's anticipated time in queue, the interconnection customer must demonstrate that engineering, permitting, and construction of the project necessitate the extension. To retain Full Capacity Deliverability, the interconnection customer also must satisfy the commercial viability criteria, which requires the interconnection customer to demonstrate, inter alia, that it has applied for necessary permits, acquired sufficient Site Exclusivity, and acquired financing for the project. In addition, the interconnection customer must have an executed GIA in good standing. The CAISO and Participating Transmission Owner

then evaluate the project's extension request to determine whether it will have a material impact on other interconnection customers, namely, whether it will negatively affect other projects' timelines or costs. Where the interconnection customer requesting the extension cannot mitigate material impacts, the request will be denied.

9. As required, Project Q17 submitted documentation demonstrating that it met the commercial viability criteria, which CAISO staff reviewed and approved. The CAISO and SCE evaluated the extension request and determined that there would be no material impact on any interconnection customer. As such, the CAISO and SCE approved the modification and amended Project Q17's In-Service and Commercial Operation Dates.

10. In February 2017 Project Q17 submitted a request for a material modification analysis to determine whether it could convert from a natural-gas-fired combined cycle plant to a photovoltaic solar plant. Although it was not yet required to do so under the CAISO tariff, Project Q17 also submitted new documentation demonstrating that it satisfied the commercial viability criteria as a solar plant in its material modification analysis request. In any case, the CAISO and SCE determined that Project Q17's conversion to a solar plant would not negatively affect the cost or timing of any other interconnection customer's project, and could be approved without need for any restudy. Accordingly, the CAISO and SCE approved Project Q17's request to change technology.

11. Upon EDF's request, EDF staff and counsel met at CAISO headquarters on September 6, 2017. In that meeting, EDF raised the issues in its Protest with the CAISO. EDF directly asked CAISO staff whether Project Q17 had demonstrated its

compliance with the commercial viability criteria as both a combined cycle project and as a solar project and when it had done so, including regarding site exclusivity and permitting details. CAISO staff refused to answer EDF's questions about Project Q17 because the CAISO tariff strictly forbids the CAISO from discussing confidential customer information with a third party (perhaps especially a direct competitor). Nevertheless, CAISO staff told EDF that the CAISO's public queue report showed that Project Q17 still had Full Capacity Deliverability Status, which it would not if it had failed the commercial viability criteria.

I declare under penalty of perjury that the foregoing is true and correct (28 U.S.C. § 1746):

Executed on: November 30, 2017

/s/ Deborah A. Le Vine  
Deborah A. Le Vine

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each party listed on the official service list for this proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010 (2017)).

Dated at Folsom, California on this 30<sup>th</sup> day of November, 2017.

*ls Grace Clark*  
Grace Clark